REMARKS/ARGUMENTS

Claims 1, 7, 14 and 21 have been amended and Claims 6, 8 and 16 have been canceled. The Examiner has withdrawn Claims 22-28 further to the Applicant's election of Claims 1-21 for further prosecution in response to a Restriction Requirement issued on July 3, 2006. Accordingly, Claims 1-5, 7, 9, 11-15, 17, 18, 20 and 21 are now pending in this application.

Applicants have hereinabove amended Claims 1, 14 and 21 to provide that the sensor is mounted in the chamber parallel to and against an end wall of the chamber. Support for this amendment is found in the specification at page 5, lines 13-21, page 6, lines 9-16, and Figures 2 and 7. No new matter has been added to the claims by this amendment.

Applicants have also amended Claim 1 to provide that the container has a transparent section and changes in said measurable property of the sensor are detectable through the transparent section. Support for this amendment can be found in Claim 8 which has now been canceled and in the specification. No new matter has been added to Claim 1 by this amendment.

In the Office Action of October 13, 2006, the Examiner has rejected the subject matter of Claims 1–9, 11, 12, 14-18 and 21 as being obvious over the combination of either U.S. Patent No. 4,036,698 issued to Bush et al. (the "698 patent") or WO98/11250 ("Simmons") and U.S. Patent No. 5,094,955 (the "955 patent"). Applicants respectfully request reconsideration and withdrawal of this rejection.

The Examiner asserts that the 698 patent and Simmons disclose all of the limitations of these claims except for the requirement that the device include a sensor mounted in the chamber wherein the sensor is positioned at an opposite end of the chamber from the filter. The Examiner asserts that the 955 patent teaches such a sensor and therefore it would have been obvious to one skilled in the art to employ a sensor as taught by the 955 patent in the containers of either the 698 patent or Simmons to achieve the presently claimed invention.

Applicants respectfully submit that the subject matter of Claims 1-9, 11, 12, 14-18 and 21 is not obvious in view of either the 698 patent or Simmons in combination with the 955 patent since the modification of the 698 patent or Simmons as asserted by the Examiner would change the principle of operation of the 698 patent or Simmons. The Examiner asserts that the sensor taught by the 955 patent be mounted in the containers of either the 698 patent or Simmons. However, this would require a substantial reconstruction and redesign of the containers of the 698 patent and Simmons and/or a change in the basic principle under which the construction of the containers of the 698 patent and Simmons were designed to operate.

In particular, the 698 patent discloses a canister formed as a right cylinder having two ports 13 and 15 provided with removable sealing caps on the top end and a port 21 with a removable sealing cap on the bottom end. See the 698 patent at Fig. 1 and column 3, lines 20-26. The Examiner asserts that port 21 is the outlet and the 698 patent provides that a filter 26 is positioned near port 21. See the 698 patent at Fig. 1 and column 3, lines 38-44. As such, a sensor would have to be mounted at the top end parallel to and against the top end wall near ports 13 and 15 as the claims of the present invention require the sensor and the

filter to be disposed at opposite ends. Further, the present claims require the sensor to be detectable through a transparent section of the container. As such, the top end of the canister would have to be reconstructed and redesigned to remove the ports 13 and 15 so that the sensor could be mounted and detectable through the top end of the canister. The sensor could not be mounted on the side walls of the canister as the present claims require the sensor to be mounted parallel to and against an end wall. Ports 13 and 15 could not remain where they are with a sensor mounted parallel to and against the top end wall since the sensor would prevent the flow of air and sample through the ports. Accordingly, the top end of the canister would have to be redesigned and thus, the principle of operation of the canister of the 698 patent would have to be changed to employ the sensor of the 955 patent in the canister of the 698 patent. As such, it would not be obvious to use the sensor of the 955 patent in the canister of the 698 patent.

Simmons discloses a method of detecting microorganisms in which a sample is placed into contact with a composition capable of detecting microorganisms. The Examiner references pages 15-17 of Simmons as disclosing a filtration and detection device. Pages 15-17 of Simmons disclose an embodiment in which a filter and housing form a filter unit. The filter unit 110 has an inlet spigot 111 and an outlet spigot 112. See Simmons at page 16 at lines 10-15. A sample is moved through the inlet spigot, the filter unit and then the outlet spigot and any microorganisms present in the sample will be supported on the filter. See Fig. 2A of Simmons. A composition capable of detecting microorganisms is then added to the filter unit 110 via the inlet spigot 111 or outlet spigot 112 and the filter unit 110 is then incubated. See Simmons at page 17, lines 1-4. The composition will then change color if microorganisms are present.

The Examiner asserts that it would be obvious to employ the sensor of the 955 patent in the filter unit of Simmons, however, Applicants respectfully submit that it would require a substantial redesign of the embodiment of Simmons cited by the Examiner to employ the sensor of the 955 patent in the filter unit of Simmons. In particular, in the embodiment of Simmons cited by the Examiner, the bubble-shaped filter is housed mid-way between the inlet spigot 111 and the outlet spigot 112. See Fig. 2A of Simmons. The filter would have to be moved into either the inlet spigot 111 or the outlet spigot 112 and a sensor would have to be mounted at the opposite end of the apparatus in the inlet spigot 111 or the outlet spigot 112 as required by the present claims. As the design of the apparatus would have to be changed to incorporate the filter unit in either the inlet spigot 111 or outlet spigot 112, the principle of operation of Simmons would have to be changed.

Further, the present claims require a sensor to be mounted parallel to and against an end wall and the sensor to be detectable through a transparent section of the container. As such, a sensor would be mounted parallel to and against an end wall of either the inlet spigot 111 or outlet spigot 112 of the apparatus of Simmons. However, the end of the inlet spigot 111 or outlet spigot 112 of the apparatus of Simmons would have to be reconstructed and redesigned to remove the opening at the end of the inlet spigot 111 or outlet spigot 112 so that the sensor could be mounted and detectable through the end. Also, an opening would have to be added to the side wall of either the inlet spigot 111 or outlet spigot 112 to allow the flow of a mass, surface or fluid. The sensor could not be mounted on a side wall of the inlet spigot 111 or outlet spigot 112 as the present claims require the sensor to be mounted parallel to and against an end wall. Accordingly, the inlet spigot 111 or outlet spigot 112 would have to be redesigned and thus, the principle of operation of the

embodiment of Simmons cited by the Examiner would have to be changed to employ the sensor of the 955 patent therein.

Accordingly, Applicants respectfully submit that Claims 1-9, 11, 12, 14-18 and 21 are not obvious in view of either the 698 patent or Simmons in combination with the 955 patent and this rejection should be withdrawn.

Also in the Office Action, the Examiner has rejected the subject matter of Claims 11-13 and 20 as being obvious over either the 698 patent or Simmons in view of the 955 patent and further in view of U.S. Patent No. 4,643,197 issued to Greene et. al. This rejection is based on the above rejection and the rejected claims are directly or indirectly dependent upon the independent claims rejected above. As such, Applicants respectfully reassert the arguments above that the claims are not obvious in view of either the 698 patent or Simmons in combination with the 955 patent since the modification of the 698 patent or Simmons as asserted by the Examiner would change the principle of operation of the 698 patent or Simmons. Accordingly, Applicants respectfully request reconsideration and withdrawal of this rejection.

In view of the foregoing, it is respectfully submitted that the claims are in condition for allowance and prompt notice to that effect is earnestly solicited.

Respectfully submitted,

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